Supreme Court, U. S.
FILED
JUN 5 1980
JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1260

NOEL CHANDLER and ROBERT GRANGER,
Appellants,

—*v.*—

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF FLORIDA

JURISDICTIONAL STATEMENT FILED FEBRUARY 14, 1980
PROBABLE JURISDICTION NOTED APRIL 21, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1260

NOEL CHANDLER and ROBERT GRANGER,
Appellants,

—*v.*—

STATE OF FLORIDA,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF FLORIDA

JURISDICTIONAL STATEMENT FILED FEBRUARY 14, 1980
PROBABLE JURISDICTION NOTED APRIL 21, 1980

INDEX TO APPENDIX

		Page
1.	Counsel's Notations of References to Appendix to Jurisdictional Statement	1
2.	Chronological List of Important Dates	2
3.	Motion to Declare Florida's Experimental Rule 3A(7) Unconstitutional as Written and as Applied [R.1117-1118]	3
4.	Renewed Motion Challenging Constitutionality of Florida's Experimental Rule 3A(7) [R.1124]	5
5.	Trial Court's Clerk's Notation Denying Renewed Motion [R.1128]	5
6.	Excerpts from Trial Court's Clerk's Minutes in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida [R.1104, 1105, 1107]	6

7. Record Excerpts from the Trial in the Eleventh Judicial Circuit in and for Dade County, Florida [R.55-56, 57-58, 65, 93-97, 141-142, 168-169, 178, 182-183, 196] 6
8. Trial Court's Preliminary Instructions to the Jury [R.204, 205] 13
9. Trial Court's Instructions to Jury Prior to First Night's Recess [R.349-351] 13
10. During Direct Examination by Assistant State Attorney Kirk Monroe of the State's "Star" Witness, John Sion [R.374] 15
11. Excerpt of Observation of Television Camera's Presence During Trial Proceedings [R.522] 15
12. Court's Instructions to the Jury at the Conclusion of the State's Case [R.653] 16
13. Court's Instructions to the Jury at the Conclusion of all the Evidence [R.923-924] 16

COUNSEL'S NOTATIONS OF REFERENCES TO APPENDIX TO JURISDICTIONAL STATEMENT

The following have been omitted in printing this Appendix because they appear on the designated pages in the Appendix to the Jurisdictional Statement (hereinafter referred to as "App").

1. Former Canon 3A(7), Florida Code of Judicial Conduct, 32 F.S.A. ..... App. 1
2. Present Canon 3A(7), Florida Code of Judicial Conduct, 32 F.S.A. ..... App. 2
3. *Chandler v. State,* 366 So.2d 64 (Fla 3rd DCA 1979) (Affirming Appellants' convictions) .... App. 7
4. *Chandler v. State,* 376 So.2d 1157 (Fla. 1979) (Dismissing Appellants' State Appeal, denying certiorari and holding the "certified" question "moot") ..... App. 3

CHRONOLOGICAL LIST OF IMPORTANT DATES

1. July 5, 1977 —Effective date of Florida's experimental televised criminal trial rule
2. July 21, 1977 —Appellants' filed motion to declare Florida's experimental Rule 3A(7) Unconstitutional as written and as applied in trial court.
3. July 27, 1977 —Trial Court enters order certifying constitutionality of Rule 3A(7) to Florida Supreme Court.
4. October 25, 1977 —Renewed motion challenging constitutionality of Florida Experimental Rule 3A(7) filed in Trial Court.
5. October 31, 1977 —Written Order denying renewed motion filed in Trial Court.
6. December 5, 1977 —Appellant's Jury Trial commences in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

[R.1117]

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO.: 77-5070A

STATE OF FLORIDA,

Plaintiff,

—vs—

ROBERT GRANGER and NOEL CHANDLER,

Defendants.

MOTION TO DECLARE FLORIDA'S
EXPERIMENTAL RULE 3A(7)
UNCONSTITUTIONAL, AS WRITTEN
AND AS APPLIED

COME NOW the Defendants, by and through their undersigned attorney, and respectfully move this Honorable Court for the entry of an Order declaring Florida's Experimental Rule 3A(7) unconstitutional as written and as applied and, as grounds therefor, the undersigned would show as follows:

1. On or about June 17, 1977, the Florida Supreme Court entered its Order Modifying Canons of Judicial Ethics 3A(7), found in 32 F.S.A. Pocket Part, and Rule 3.110, for the one-year period beginning July 5, 1977 through June 30, 1978, to permit the presence during pre-trial and trial proceedings of television cameras and still photographers for broadcast purposes, either by tape or simultaneous reply; said Experimental Rule also permits the Presiding Judge to allow other members of the media to broadcast live the proceedings.

2. The Defendants feel that if this Court permits live broadcasts of their trial, they will not be able to receive a fair and impartial trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, nor would they receive due process of law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, nor would they receive due process of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. In addition, the Defendants feel that the presence of television cameras will have a harmful and prejudicial effect on prospective witnesses, [R.1118] jurors, their attorney, and possibly even the learned trial judge.

3. The Defendants' case has received a substantial amount of publicity thus far due to the fact that Defendants are City of Miami Beach Police Officers charged with Burglary, among other crimes.

4. As the U.S. Supreme Court said in *Estes v. Texas,* 381 U.S. 532 (1965), the presence of television cameras is legally irrelevant to the fact-finding process and will substantially harm and impair the Defendant's right to a fair and impartial trial free from the possibility of taint; in essence, the United States Supreme Court went on to assert that the presence of television cameras in the courtroom during Defendant's trial will clearly deny the Defendant due process of law.

5. In promulgating Experimental Rule 3A(7) and Rule 3.110, *Florida Rules of Criminal Procedure,* the Florida Supreme Court neglected to take into consideration a defendant's rights and was concerned, apparently, solely with the rights of media. As Justice Hugo Black asserted 36 years ago, in a clash between the First and Sixth Amendments, the First must yield to a defendant's right to a fair and impartial trial free from the possibility of taint and prejudice.

WHEREFORE, the undersigned prays for an appropriate Order declaring the Experimental Rule unconstitutional as written and as applied, or, in the alternative, for an Order prohibiting the presence of live cameras and still photographers during all proceedings herein.

(Signature and Certificate of Service Omitted)

[R.1124]

RENEWED MOTION CHALLENGING CONSTITUTIONALITY OF FLORIDA EXPERIMENTAL RULE 3A(7)

COME NOW the Defendants, by and through their undersigned attorney, and respectfully file this, their Renewed Motion Challenging the constitutionality of Florida's Experimental Canon 3A(7), and, as grounds therefor, would show as follows:

1. Prior hereto, the undersigned filed on behalf of the Defendants a challenge to the constitutionality of Florida's Experimental Canon 3A(7).

2. This Court certified the question of whether Canon 3A(7) was mandatory or discretionary to the Florida Supreme Court. The Florida Supreme Court declined to rule on said Certified Question by dismissing same, apparently concluding that the Certified Question was not dispositive of the cause.

3. Defendants continue to object to the presence of television cameras and still photographers in the courtroom and, therefore, request this Court to enter its Order on Defendants' Motion, a copy of which is attached hereto as if set forth more fully herein, and further request that this Court bar still photographers and television cameras from all proceedings herein.

WHEREFORE, the undersigned prays for such Order as is just and proper.

(Signature and Certificate of Service Omitted).

[R.1128]

DATE OF HEARING Oct 27, 1977

*****

This Mtn to be treated as Mtn to exclude photographers, T.V.'s, & tape recorders — DENIED.

EXCERPTS FROM TRIAL COURT'S CLERK'S MINUTES IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

[R.1104]

[December 5, 1977, prior to Commencement of Jury Selection]

*****

Oral Mtn to remove TV cameras & still photographers from courtroom — Denied. Oral Mtn to sequester the jury — Denied.

*****

[R.1105]

[Trial Jury Sworn]

Renewed Mtn to sequester the jury Denied. (In the absence of the jury).

*****

[R.1107]

[State's testimony begun]

The court recessed the trial of this cause til December 6, 1977. 10:00 A.M.

Renewed request to sequester the jury and also the Witnesses — Den.

*****

RECORD EXCERPTS FROM THE TRIAL IN THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

[R.55-56]

[December 5, 1977, Preliminary Matters at Trial]

*****

MR. HIRSCHHORN [Defense Attorney]: At this time, even though we have not begun selecting a jury, I would renew my motion pursuant to 3A(7), Florida's Experimental Rule.

I do not see them in the courtroom yet. It is our position that Canon 3A(7) is unconstitutional.

[R.57]

I would ask the Court to preclude the cameras from the courtroom, and still photographs, in the event they appear and, in addition, sequestrate the jury from the outside because I have reason to believe that at some point in time, even though the cameras are not here now, they will be covering portions of this trial. There are cameras outside, and at least two or three television stations outside, and I have been contacted by the media with respect to this case.

THE COURT: Motion denied.

MR. HIRSCHHORN: That is to exclude the cameras. What about sequestering the jury?

THE COURT: Denied.

MR. HIRSCHHORN: Will the Court give the special instruction to the jury?

THE COURT: I will give the ordinary instruction to the jury that I give in each case.

MR. HIRSCHHORN: I also ask the Court, once we start picking the jury, in addition, to sequester the witnesses to the extent that they are instructed not to watch any television accounts of the trial, especially in any portions of their testimony, if any portions of the witness' testimony is televised. In other words, if a witness —

THE COURT: I will instruct the witnesses not [R.58] to watch any television accounts of the trial.

*****

TRIAL COURT PROCEEDINGS CONTINUED,
JURY SELECTION PROCEEDINGS

[R.65]

[Thereupon, counsel for the respective parties and the court reporter approached the bench, and the following proceedings were had outside the hearing of the jury:]

MR. HIRSCHHORN: Your Honor, I just want the record to reflect that the cameras are in the courtroom.

THE COURT: There is a camera.

MR. HIRSCHHORN: There is a portable camera from Channel 10 in the courtroom, and I just want that clearly reflected in the record.

*****

[R.93]

MR. HIRSCHHORN: As you can see, there is a camera right over in that corner right there [indicating]. I do not know if that camera is going to be here throughout the course of the trial, but let me ask you: Are any of you familiar with the case that was recently televised, the Zamora trial? Mrs. Fleming [a prospective juror]?

MRS. FLEMING: Yes.

MR. HIRSCHHORN: So Mr. Vidal [a prospective juror] and Miss Warren [a prospective juror], you are not familiar with that? Let me direct my attention to the four of you, then.

[R.94]

Did you watch any portion of the Zamora trial on television?

MRS. FLEMING: On the news.

MR. BROMBERG [a prospective juror]: Not purposely. I saw some of it.

MR. HIRSCHHORN: Was there anything about the fact that that case was being televised live that would affect you here today? In other words, before you jump to the answer, it is important because not every case is televised.

What I am trying to find out really is will you be able to be as conscientious, as fair and as impartial in this case, even if

that camera remains in this courtroom during part or all of this trial, or are you likely to say to yourself, "Well, there is something special about this case," and perhaps give this case a different kind of treatment than you would.

Mrs. Warren?

MISS WARREN: Yes.

MR. HIRSCHHORN: Mr. Vidal —

THE COURT: That "yes" was —

MR. HIRSCHHORN: It is telling me something, Judge. I understand, but if I might get back to it, Your Honor —

THE COURT: I hesitate to have the record [R.95] leave that "yes" in the record, as is.

MR. HIRSCHHORN: I understand. I will get back to it, if I might, Your Honor.

Mrs. Fleming? Mr. Metzger [a prospective juror]?

MR. METZGER: No.

MR. HIRSCHHORN: Mr. Kane?

MR. KANE [a prospective juror]: No.

MR. HIRSCHHORN: Mr. Bromberg?

MR. BROMBERG: No.

MR. HIRSCHHORN: Miss Warren? Can you hear me now?

MISS WARREN: Yes. I hear you.

MR. HIRSCHHORN: You indicated — perhaps my question was a little wrong — what I am asking is have you ever been on television, Miss Warren?

MISS WARREN: No, I haven't.

MR. HIRSCHHORN: You are likely to be on television as a result of this case. Will that fact affect you in some way?

MISS WARREN: No. I don't believe it will. I don't believe it will.

MR. HIRSCHHORN: What about you, Mr. Vidal?

MR. VIDAL [a prospective juror]: No.

MR. HIRSCHHORN: Any of you?

If the Judge instructs you — By the [R.96] way, have you ever been on television, Miss Warren?

MISS WARREN: No.

MR. HIRSCHHORN: Have you ever been, Mrs. Fleming?

MRS. FLEMING: No.

MR. HIRSCHHORN: Mr. Metzger?

MR. METZGER: Yes.

MR. HIRSCHHORN: You have. Mr. Kane, have you?

MR. KANE: Yes.

MR. HIRSCHHORN: You would have been?

MR. KANE: Yes.

MR. HIRSCHHORN: Mr. Bromberg?

MR. BROMBERG: Yes.

MR. HIRSCHHORN: What have you been on television in connection with?

MR. BROMBERG: Teaching.

MR. HIRSCHHORN: You, Mr. Metzger?

MR. METZGER: Quiz shows.

MR. HIRSCHHORN: National quiz shows?

MR. METZGER: Yes.

MR. HIRSCHHORN: How did you do?

MR. METZGER: Pretty Good.

MR. HIRSCHHORN: You are not the $64,000 expert, are you?

[R.97]

MR. METZGER: No sir.

MR. HIRSCHHORN: Will the fact that you have never been on television before cause you, as a matter of curiosity, to perhaps turn the T.V. on during the course of the trial? If you are instructed, as you will be, I am sure, not to watch anything or to turn on television in order to see yourself in connection with this trial, will you follow that instruction?

THE PROSPECTIVE JURY: Sure.

MR. HIRSCHHORN: In other words, will you resist the temptation to watch yourself, if the Judge says do not. Will you be able to do that?

You have been on television before, so —

May [sic] I clarify the record for the Court, Your Honor?

THE COURT: I believe so.

*****

[R.141]

MR. HIRSCHHORN: In the interest of saving some time, I am going to ask the next series of questions to the four of you, collectively.

As you can see, there is a camera over in the corner there, and I would like to know whether any of the four of you feel that the presence of the camera in the courtroom, recording what you and I are doing here today is likely to affect you in any way, to the best of your ability?

THE PROSPECTIVE JURY: No.

MR. HIRSCHHORN: Have any of the four of you ever been on television?

[R.142]

THE PROSPECTIVE JURY: No.

MR. HIRSCHHORN: If the Judge instructs you not to watch television accounts of this trial, will you be able to follow that instruction?

MR. SQUERO [a prospective juror]: How do you mean?

THE COURT: If I tell you not to watch any news shows or any television accounts of this trial, will you follow that instruction?

MR. SQUERO: If you tell me to, of course, you are ordering.

*****

[R.168]

MR. HIRSCHHORN: Mrs. Madison and Mrs. Hawkins [prospective jurors], as you know I have asked everyone so far that sat on this panel — there is a camera sitting right over there and it may be on now — I don't know — and it may be recording this event, and it may be televised tonight or some other time during the week or in the future. Is there anything about the fact that there is a camera in this courtroom which might give you some [R.169] concern in terms of your ability to be fair and impartial, one way or the other? Mrs. Madison? Mrs. Hawkins?

MRS. MADISON: No.

MRS. HAWKINS: No.

*****

[R.178]

THE COURT: Have you ever served as a juror before, Mr. Cook [a prospective juror]?

MR. COOK: No.

THE COURT: Do you know anything about this case from the media?

MR. COOK: Possibly something from television, but nothing that I can clearly remember.

THE COURT: You did not form any opinions about the guilt or innocence of these defendants, did you?

MR. COOK: I did not.

*****

[R.182]

MR. HIRSCHHORN: Will the presence of the camera in the courtroom and the fact that it is likely, the fact that there is a possibility that portions of this trial may well be telecast tonight or the rest of the week, either in whole or in part, will that affect you in any way?

MR. COOK: No.

[R.183]

MR. HIRSCHHORN: If it does, will you bring it to the Court's attention?

MR. COOK: I will.

*****

[R.196]

[During selection of the alternate juror]

MR. HIRSCHHORN: Would the fact that there is a camera in this courtroom over in the corner there behind the bailiff affect you in any way.

MR. TURNER [a prospective alternate juror]: No.

MR. HIRSCHHORN: If it does, will you bring it to the Court's attention?

MR. TURNER: Yes.

*****

TRIAL COURT'S PRELIMINARY INSTRUCTIONS TO THE JURY

*****

[R.204]

THE COURT: During the trial, you must not discuss the case among yourselves, nor with anyone else, nor permit anyone to discuss it in your presence. You must also avoid watching, reading, seeing or listening to anything about this case on any of the media. You must confine your deliberations in this case specifically to what you have heard in this courtroom.

*****

[R.205]

MR. HIRSCHHORN: May we renew our request now that the jury is selected, and sequester the jury?

THE COURT: You may renew it. It will be denied.

*****

TRIAL COURT'S INSTRUCTIONS TO JURY PRIOR TO FIRST NIGHT'S RECESS

*****

[R.349]

THE COURT: It is also very important that you are to avoid seeing and hearing anything about this case as reported in any of the media. Do not read any newspaper articles about it. Perhaps it might be a good idea if you just avoid the local news and watch only the national news on television. If somebody calls out any report of this case to your attention, you may say that is the jury I am serving on. Do not say anything more about it.

It is very important, as I told you, you are not to let anything which happens outside the courtroom interfere. Your decision must be based solely on what happens inside the courtroom.

Ten o'clock tomorrow morning.

[Whereupon, the jury withdrew from the courtroom, and the following proceedings were had:]

[R.350]

MR. HIRSCHHORN: Your Honor, I just wanted to —

THE COURT: Close the door, please.

MR. HIRSCHHORN: Your Honor, I just wanted to renew my request. It is a little late now, but I wanted to renew my request that the jury be sequestered in light of the media coverage, and renew my request that the witnesses be excused — several witnesses have testified so far — and I think Rule 3.87 [sic] in regard to witness sequestration rights — Unless the witnesses are instructed by the Court, not by Mr. Munroe, they are not to watch any television accounts of testimony, I suggest that there is —

THE COURT: There is only the future witnesses which are in issue, not the past witnesses. Future witnesses may not see what the past witnesses — only future witnesses which are in question as far as the admonition is concerned. Is that not true?

MR. HIRSCHHORN: Mr. Dardis may be recalled, certainly recalled in our case.

THE COURT: I will instruct each of you to instruct each of your witnesses not to watch any television coverage of this trial. It is after six o'clock.

MR. HIRSCHHORN: The news goes on at 7:30 [R.351] tonight because the [Miami Dolphins] football game will be on later than that.

THE COURT: The problem you raise is an interesting academic one, but of no practical purpose whatsoever.

MR. HIRSCHHORN: Perhaps the federal court will not see it that way.

THE COURT: The television cameras — no witnesses' testimony was reported or televised in any way.

[Whereupon, at 6:34 p.m., the trial was continued to Tuesday, December 6, 1977.]

DURING DIRECT EXAMINATION BY ASSISTANT STATE ATTORNEY KIRK MONROE OF THE STATE'S "STAR" WITNESS, JOHN SION:

[R.374]

A [By Mr. Sion]: Television shows, no, sir, just talk shows, radio shows — mostly talk shows. It was the only Police Story I ever recorded, which I was planning to use, initially, planning to record.

THE COURT: *Just a moment. Take the jury out.*

[Whereupon, the jury withdrew from the courtroom, and the following proceedings were had:]

THE COURT: *Sir, you are not permitted to do anything with respect to the TV camera during the course of a court session. You will cease doing that.*

What is your name and your affiliation, sir?

THE CAMERAMAN: *Gino Bruno, WPLG.*

THE COURT: Fine.

MR. MUNROE: Could I have the last questions and answer read back, Judge?

THE COURT: Read it back.

[Whereupon, the requested portion of the record was read by the reporter as above recorded.]

[Emphasis added.]

EXCERPT OF OBSERVATION OF TELEVISION CAMERA'S PRESENCE DURING TRIAL PROCEEDINGS

[R.522]

MR. HIRSCHHORN: Judge, before we bring in the jury, can I clear the record up on some matters? I would like the record to reflect this is the first recess. I will waive the defendants' presence while I just do some formal matters. This is the first recess since we started, and while the Court observed the camera was not in the courtroom during the

morning session, the camera was in place and in place all during the afternoon session.

*****

COURT'S INSTRUCTIONS TO THE JURY AT THE CONCLUSION OF THE STATE'S CASE.

[R.653]

THE COURT: I am sure it is not necessary to repeat the instructions made at the beginning of the trial and, more specifically, the one I gave you before the nightly recess last night. Please remember and carefully abide by those instructions.

We will see you tomorrow morning at ten o'clock.

[Whereupon, the jury withdrew from the courtroom, and the following proceedings were had:]

*****

COURT'S INSTRUCTIONS TO THE JURY AT THE CONCLUSION OF ALL THE EVIDENCE

*****

[R.923]

MR. HIRSCHHORN: Defendant Chandler rests, Your Honor, and Defendant Granger rests.

THE COURT: Is there any rebuttal?

MR. MUNROE: No. State rests.

THE COURT: Ladies and gentlemen, you have heard all the testimony which is going to be received in this case. Insofar as your services are concerned, we are going to adjourn until ten o'clock tomorrow morning.

Again at this time it is most important, if anything more important than any other time of the trial, that you carefully remember and carefully abide by the instructions I gave you at the beginning of the trial and at the beginning of each of the nightly recesses we have had in the past. Again, remember and abide by those instructions.

Do not form any opinions about the case. Do not discuss it among yourselves or with anyone else in any way. If someone

attempts to discuss it in your presence, please inform me immediately. If you happen [R.924] to overhear or see or be told of anything with relation to the case, please cease that conversation or relation as soon as you can, and report the incident, if it occurs, to me tomorrow morning.

We will see you tomorrow morning at ten o'clock. Please wait outside the courtroom.

Gentlemen, please remain here. We will be in recess for ten minutes.

[Whereupon, the jury withdrew from the courtroom and, after a brief recess, the following proceedings were had:]

*****